IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.856 OF 2006

Bhimrao Santu Patil
since deceased through his
legal Heirs and representatives:-
1a. Shri Rajaram Bhimrao Patil
and Ors. .....Appellants

V/s

Ramchandra Krishna Patil
since deceased through his
legal heirs and representatives
1a. Smt. Lilabai Ramchandra Patil
and Ors. ..... Respondents.

Mr. N.R. Bubna for the appellants.

Mr. N.V. Bandiwadekar for Respondent Nos. 1-a, 1-c, 1-e, 1-g and 1-f.

CORAM: V.M. KANADE, J.
DATE : 21st August, 2007

P.C.:

1. Heard the learned Counsel for the appellants and the learned Counsel appearing on behalf of respondent Nos. 1-a, 1-c, 1-e, 1-g and 1-f.

2. The appellant - original plaintiff had filed a suit for partition. It is the case of the appellant - original plaintiff that he was taken in adoption by the wife of Santu. He filed a suit for partition in the year 1984. Respondents filed their

Written Statement and submitted that the land was already partitioned in the year 1921 and that the properties in Schedule-B of the plaint were self acquired properties of Kirshna and, therefore, the plaintiff did not have any right over the said lands and properties. The Trial Court dismissed the suit of the plaintiff. Being aggrieved by the order passed by the Trial Court, appellant preferred an appeal before the District Court. His appeal also was, however, dismissed and the order passed by the Trial Court was confirmed.

3. The learned Counsel appearing on behalf of the appellants submitted that both the Courts below had recorded a finding in respect of the partition of the suit lands which was perverse since it was not borne out from the record. He further submitted that both the lower Courts had misdirected itself to the real issues which were involved in the case and had dismissed the suit of the plaintiff by recording a finding which was perverse. He submitted that both the Courts below erred in holding that the appellant had not established that the property in question was a joint property when, in fact, an admission to that effect was given by the defendants in their Written Statement and also in the evidence. He submitted that both the lower Courts erred in holding that the suit was bad for non-joinder of mother of the appellant - original plaintiff who was a necessary party to the said suit. He submitted that the evidence of plaintiff was not taken into consideration by the Trial Court and the lower

Appellate Court. He further submitted that there was no evidence to establish that the property was partitioned in 1921 since the names of all the heirs of Krishna were recorded initially but subsequently the said entries were deleted. He submitted that the appellant did not get an inch of lands in respect of an ancestral property and, as such, theory of partition, as propounded by the defendants, was patently incorrect.

4. This Court had directed the parties to prepare a compilation from the paper-book in order to appreciate the aforesaid submissions made by the learned counsel appearing on behalf of the appellants and, accordingly, a complete compilation of the plaint, written statement and the oral evidence has been submitted by the parties.

5. In my view, no case is made out by the appellants for interfering with the concurrent findings recorded by both the Courts below. No substantial question of law is raised in this second appeal. The appellants have not been in a position to establish that the properties mentioned in Schedule-A were ancestral properties. The burden of proving existence of a Joint Hindu Family Property is on the person who makes such assertion. Both the Courts below have recorded a finding that neither the original plaintiff nor the other witness who has been examined on his behalf was in a position to give details about the property in question and that the said averments in the plaint as also the evidence

given by his witness are very vague and, therefore, both the Courts below have held that this fact has not been established by the plaintiff. Defendants, on the other hand, had come out with a clear case that the property mentioned in Schedule-A was partitioned way back in 1921 and, in support of the said contention, have brought on record evidence to show that, in fact, part of the land which was partitioned and which went to the father of the appellant - original plaintiff was clearly demarcated and was subsequently purchased by Krishnaji. The other document in the form of sale deed also has been brought on record by the defendants to establish that the partition had taken place. This evidence was accepted by the Trial Court and a finding was recorded that there was a partition between three brothers. This finding has been approved and confirmed by the Lower Appellate Court. It has been brought on record that the appellants hold two self acquired properties.

6. The submission made by the learned Counsel appearing on behalf of the appellants cannot be accepted. No case is made out for interfering with the finding recorded by both the Courts below. Second Appeal is dismissed.

(V.M. KANADE, J.)